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**FACSIMILE TRANSMITTAL SHEET AND  
CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8**

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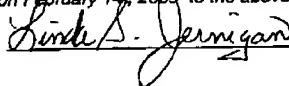
**FEB 14 2005**

**TO: Examiner Mojdeh Bahar United States Patent and Trademark Office**

Fax No. 703-872-9306

Phone No. 703-305-1007

*I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on February 14, 2005 to the above-identified facsimile number.*

 (Signature)

**FROM: Linda S Jernigan** Typed or printed name of person signing Certificate)

Fax No. 513-622-3300

Phone No. 513-622-2811

Listed below are the item(s) being submitted with  
This Certificate of Transmission: \*\*

Number of Pages Including This Page: 11  
Inventor(s): Hayek et al.

- 1) Appeal Brief – 6 pgs..
- 2) Extension of Time – 5 mos. - orig. w/copy
- 3) Fee Transmittal – orig. w/copy

S.N. 09/845,941  
Filed: April 30, 2001  
Case: P126

Comments:

<b>FEE TRANSMITTAL</b> <b>for FY 2005</b> Patent fees are subject to annual revision. Effective December 8, 2004	<b>Complete if Known</b>	
	Application Number	09/845,941
	Confirmation Number	3312
	Filing Date	April 30, 2001
	First Named Inventor	Hayek et al.
	Examiner Name	Mojdeh Bahar
	Art Unit	1617
<b>TOTAL AMOUNT OF PAYMENT (\$1,520)</b>		Attorney Docket No. P126

<b>METHOD OF PAYMENT</b>		<b>FEE CALCULATION (continued)</b>																															
1. <input checked="" type="checkbox"/> The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to: Deposit Account Number: 16-2480 Deposit Account Name: The Procter & Gamble Company		5. <b>ADDITIONAL FEES</b> <table border="1"> <thead> <tr> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Extension for reply within 1<sup>st</sup> month</td> <td>(\$120) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 2<sup>nd</sup> month</td> <td>(\$450) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 3<sup>rd</sup> month</td> <td>(\$1,020) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 4<sup>th</sup> month</td> <td>(\$1,590) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 5<sup>th</sup> month</td> <td>(\$2,160) <input type="checkbox"/></td> </tr> <tr> <td>Information Disclosure Statement fee</td> <td>(\$180) <input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.16(e) Late Oath/Declaration (nonprovisional)</td> <td>(\$130) <input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.17 (g) Missing Parts (provisional)</td> <td>(\$50) <input type="checkbox"/></td> </tr> <tr> <td>Non-English specification</td> <td>(\$130) <input type="checkbox"/></td> </tr> <tr> <td>Notice of Appeal</td> <td>(\$500) <input type="checkbox"/></td> </tr> <tr> <td>Filing a brief in support of an appeal</td> <td>(\$500) <input type="checkbox"/></td> </tr> <tr> <td>Request for oral hearing</td> <td>(\$1,000) <input type="checkbox"/></td> </tr> <tr> <td>Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)</td> <td>(\$1,370) <input type="checkbox"/></td> </tr> <tr> <td>Other:</td> <td><input type="checkbox"/></td> </tr> </tbody> </table>		Fee Description	Fee Paid	Extension for reply within 1 <sup>st</sup> month	(\$120) <input type="checkbox"/>	Extension for reply within 2 <sup>nd</sup> month	(\$450) <input type="checkbox"/>	Extension for reply within 3 <sup>rd</sup> month	(\$1,020) <input type="checkbox"/>	Extension for reply within 4 <sup>th</sup> month	(\$1,590) <input type="checkbox"/>	Extension for reply within 5 <sup>th</sup> month	(\$2,160) <input type="checkbox"/>	Information Disclosure Statement fee	(\$180) <input type="checkbox"/>	37 CFR 1.16(e) Late Oath/Declaration (nonprovisional)	(\$130) <input type="checkbox"/>	37 CFR 1.17 (g) Missing Parts (provisional)	(\$50) <input type="checkbox"/>	Non-English specification	(\$130) <input type="checkbox"/>	Notice of Appeal	(\$500) <input type="checkbox"/>	Filing a brief in support of an appeal	(\$500) <input type="checkbox"/>	Request for oral hearing	(\$1,000) <input type="checkbox"/>	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370) <input type="checkbox"/>	Other:	<input type="checkbox"/>
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4. <b>EXTRA CLAIM FEES FOR UTILITY AND REISSUE:</b> <table border="1"> <thead> <tr> <th></th> <th>Extra Claims</th> <th>Fee from Below</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Independent Claims <input type="checkbox"/> - 3*** = <input type="checkbox"/> x</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Multiple Dependent claims:</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> </tbody> </table> ** or number previously paid, if greater; For Reissues, see below <b>Fee Description</b> Claims in excess of 20 (\$50 per claim) Independent claims in excess of 3 (\$200 per claim) Multiple dependent claim, if not paid (\$360) **Reissue: each Independent claim over 3 and more than in the original patent (\$200 per claim) **Reissue claims: each claim over 20 and more than original patent (\$50 per claim) SUBTOTAL (4) (\$) <input type="checkbox"/>			Extra Claims	Fee from Below	Fee Paid	Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>	Independent Claims <input type="checkbox"/> - 3*** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>	Multiple Dependent claims:	<input type="checkbox"/>	=	<input type="checkbox"/>	SUBTOTAL(5) (\$1,520)															
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<b>SUBMITTED BY</b>		<b>Complete (if applicable)</b>	
Name (Print/Type)	Cynthia L. Clay	Registration No. (Attorney/Agent)	54,930
Signature	<i>Cynthia L. Clay</i>	Telephone	(513) 622-0291
		Date	2/14/05

+ This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is customized to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon individual case. Any comments on the amount of time you are required to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P. O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

# **FEE TRANSMITTAL** for FY 2005

Patent fees are subject to annual revision.  
Effective December 8, 2004

Complete if known

Application Number	09/845,941
Confirmation Number	3312
Filing Date	April 30, 2001
First Named Inventor	Hayek et al.
Examiner Name	Mojdeh Bahar
Art Unit	1617
Attorney Docket No.	P126

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TOTAL AMOUNT OF PAYMENT (\$1,520)

## METHOD OF PAYMENT

1. [X] The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to:
- Deposit Account Number: 16-2480  
Deposit Account Name: The Procter & Gamble Company

## FEE CALCULATION

## 2. BASIC FILING FEE - Large Entity

	FILING FEE	SEARCH FEE	EXAMINATION FEE	
Application Type				Fee Paid
Utility	(\$300)	(\$500)	(\$200)	(Total = \$1000) <input type="checkbox"/>
Design	(\$200)	(\$100)	(\$130)	(Total = \$430) <input type="checkbox"/>
Reissue	(\$300)	(\$500)	(\$600)	(Total = \$1400) <input type="checkbox"/>
Provisional filing fee				(Total = \$200) <input type="checkbox"/>

## 3. APPLICATION SIZE FEE:

Sheets of Spec and Drawings ☐  
(\$250 for each 50 sheets in excess of 100, except for sequence and program listings)

SUBTOTAL (2)+(3) (\$)☐

## 4. EXTRA CLAIM FEES FOR UTILITY AND REISSUE:

	Extra Claims	Fee from Below	Fees Paid
Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Multiple Dependent claims:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\*\* or number previously paid, if greater; For Reissues, see below

## Fee Description

Claims in excess of 20 (\$50 per claim)  
Independent claims in excess of 3 (\$200 per claim)  
Multiple dependent claim, if not paid (\$360)  
\*\*Reissue: each independent claim over 3 and more than in the original patent (\$200 per claim)  
\*\*Reissue claims: each claim over 20 and more than original patent (\$50 per claim)

SUBTOTAL (4) (\$)☐

## FEE CALCULATION (continued)

## 5. ADDITIONAL FEES

Fee Description		Fee Paid
Extension for reply within 1 <sup>st</sup> month	(\$120)	<input type="checkbox"/>
Extension for reply within 2 <sup>nd</sup> month	(\$450)	<input type="checkbox"/>
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Non-English specification	(\$130)	<input type="checkbox"/>
Notice of Appeal	(\$500)	<input type="checkbox"/>
Filing a brief in support of an appeal	(\$500)	<input type="checkbox"/>
Request for oral hearing	(\$1,000)	<input type="checkbox"/>
Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370)	<input type="checkbox"/>
Other:		<input type="checkbox"/>

SUBTOTAL(5) (\$1,520)

## SUBMITTED BY

Name (Print/Type)

Cynthia L. Clay

Registration No.

54,930

Complete (if applicable)

Telephone (513) 622-0291

Signature

Cynthia L. Clay

Date

2/14/05

This collection of information is required by 37 CFR 1.17. The information is required to obtain or maintain a benefit by the public which is to be filed (and by the USPTO as provided) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is exempted to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. There will vary depending upon individual case. Any comments on the content of this form are required to complete this form under regulations for submitting this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Appl. No. 09/845,941  
Atty. Docket No. P126  
Appellant Brief February 14, 2005  
Customer No. 27752

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FEB 14 2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.: 09/845,941  
Applicant(s) : Hayek et al.  
Filed : April 30, 2001  
Title : Pet Food Composition For Reducing  
Inflammatory Response In Cats  
TC/A.U. : 1617  
Examiner : Mojdeh Bahar  
Conf. No. : 3312  
Docket No. P126  
Customer No. : 27752

**APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450  
Dear Sir,

This Brief is filed pursuant to the appeal from the U.S. Patent and Trademark Office decision mailed June 16, 2004 finally rejecting Claims 1-4, 10, and 11. A Notice of Appeal was timely filed on September 24, 2004. Attached hereto is a Petition for Extension of Time, and the fee required under 37 C.F.R. § 1.17(a)(1), providing for a timely filing of this brief to and including February 24, 2005.

**REAL PARTY IN INTEREST**

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

Appl. No. 09/845,941  
Atty. Docket No. P126  
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### RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

### STATUS OF CLAIMS

Claims 1-4, 10, and 11 are finally rejected. Claims 6-9 are withdrawn.

Claims 1-4, 10, and 11 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

### STATUS OF AMENDMENTS

No amendment was filed.

### SUMMARY OF CLAIMED SUBJECT MATTER

The present invention claims a pet food composition comprising an effective inflammatory response-reducing amount, on a dry matter basis, of omega-6 and omega-3 fatty acids in a weight ratio of about 5:1, the omega-3 fatty acids comprises at least about 80% alpha-linoleic acid derived from flaxseed oil, by weight of the omega-3 fatty acids, and the majority of omega-6 fatty acids are derived from flaxseed oil, the composition comprising from about 7 to about 14% by weight total fat, the composition is formulated as a cat food. (specification page 3, lines 28-35 and page 4, lines 1-13).

### GROUND'S OF REJECTION TO BE REVIEWED ON APPEAL

- (I) Rejection under 35 U.S.C. 103(a) over EP Patent No. 0678247.
- (II) Rejection under 35 U.S.C. 103(a) over EP Patent No. 0678247 in view of U.S. Patent No. 4,229,485.

### ARGUMENTS

Claims 1-4 are patentable over Reinhart because the reference fails to teach or suggest all of the claimed limitation of the present invention.

The Examiner has rejected Claims 1 - 4 under 35 U.S.C. § 103 in view of Reinhart. The Examiner states that Reinhart teaches pet foods containing omega-6 and omega-3 fatty acids, at a ratio of from 3:1 to 10:1. The Examiner further states that the source of these fatty acids may be from a variety of sources, including fish oil and flax.

Appl. No. 09/845,941  
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The Examiner states that Reinhart teaches that the percentage of crude fat is 20% to 23%, but does not teach crude fat in the range of from about 7% to about 14%.

Reinhart discloses that Menhaden (fish) oil is a concentrated source of eicosapentaenoic acid; that flax oil is a concentrated source of alpha-linolenic acid; and that safflower oil is a concentrated source of linoleic acid. Reinhart states that each of these sources can be utilized to prepare compositions having omega-6 to omega-3 fatty acid ratios of 5 : 1; 10 : 1; 25 : 1; 50 : 1; or 100 : 1. In the present invention, Claims 1 - 4 require pet foods comprising omega-6 and omega-3 fatty acids, wherein the ratio of these components is about 5 : 1. Moreover, Appellants' claims require the majority of the omega-6 fatty acids to be derived from flaxseed oil and at least about 80% of alpha-linoleic acid derived from flaxseed oil, by weight of the omega-3 fatty acids.

In contrast, Reinhart fails to teach or suggest any difference among sunflower, fish or flaxseed oil, or any preference among fish or flaxseed oil, or any other source of omega-6 or omega-3 fatty acids, at any total fat level in any composition. Moreover, Reinhart fails to teach or suggest use of flaxseed oil specifically, to provide highly concentrated levels of omega-3 and omega-6 fatty acids. Indeed, as Appellants' claims omega-6 fatty acids, the majority of which are derived from flaxseed oil, and omega-3 fatty acids, in which at least 80% is linoleic acid derived from flaxseed oil, Reinhart fails to make any suggestion of such specifications. "To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." MPEP § 2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

The criticality of these claimed elements has been demonstrated and disclosed in the present specification. Appellants' have explicitly shown that at the low levels of fat recited in Appellants' claims (which are not suggested by Reinhart), there is a critical source of omega-3 fatty acids and omega-6 fatty acids which should be used. Indeed, Appellants' specification states that "whereas both fish oil and flaxseed oil can be included in the feline diet to reduce inflammatory response, flaxseed oil offers a better alternative in a lower lipid (14%) diet because flaxseed oil shows minimal immunosuppressive activity compared to fish oil." See Appellants' specification, page 12.

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The Examiner requested an understanding of the practical effect of the present discovery. As is commonly understood immunosuppressive activity is linked to inflammation, and omega-3-fatty acids have also been shown to suppress immune function, particularly in immunosuppressed individuals. See e.g., Wu and Meydani, "n-3 Polyunsaturated Fatty Acids and Immune Function, *Proc. Nutr. Soc.*, Vol 57(4), pp. 503 - 509 (1998); Meydani, "Effect of (n-3) Polyunsaturated Fatty Acids on Cytokine Production and Their Biologic Function," *Nutrition*, Vol. 12 (1 Suppl.), pp. S8 - 14 (Jan. 1996); Meydani and Dinarello, "Influence of Dietary Fatty Acids on Cytokine Production and its Clinical Implications," *Nutr. Clin. Pract.*, Vol. 8(2), pp. 65 - 72 (Apr. 1993) (abstract copies attached for the convenience of the Examiner). As such, that flaxseed oil has been shown by the inventors to contribute to minimized immunosuppressive activity is indeed exciting and presents practical ramifications of enhanced use of omega-3-fatty acids in the pet food compositions of the present invention.

Since unexpected results have been shown at this level of lipid (i.e., a break-out amongst sources of omega-3 and omega-6 fatty acid), non-obviousness of Claims 1 - 4, has been demonstrated. Reinhart fails to teach or even suggest low levels of dietary fat (from about 7% to about 14%) in combinations with the criticality of omega-3 or omega-6 fatty acid source at this specific level.

Therefore, Appellants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

**Claims 11 and 12 are patentable over Reinhart in view of Brown because the reference fails to teach or suggest all of the claimed limitation of the present invention.**

The Examiner has rejected Claims 10 and 11 under 35 U.S.C. § 103 over Reinhart in view of Brown. The Examiner states that Reinhart teaches pet foods containing omega-6 and omega-3 fatty acids, at a ratio of from 3 : 1 to 10 : 1. The Examiner further states that the source of these fatty acids may be from a variety of sources, including fish oil and flax. The Examiner states that Reinhart teaches that the percentage of crude fat is 20% to 23%, but does not teach crude fat in the range of from about 7% to about 14%.

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The Examiner further states that Brown teaches that cat foods can be in canned or kibble form.

Appellants assert that the arguments presented above regarding Reinhart in traversing the § 103(a) rejection also apply to the present rejection. The Reinhart reference fails to teach or even suggest low levels of dietary fat (from about 7% to about 14%) in combinations with the criticality of omega-3 or omega-6 fatty acid source at this specific level.

Moreover, as Brown does nothing to remedy the deficiencies of Reinhart, the non-obviousness of Claims 10 and 11 has also been demonstrated. That Brown teaches canned and kibble cat foods is immaterial to the inventive discoveries relevant to low levels of lipid in combination with the specified omega-3-fatty acid, flax seed oil. The combination of Reinhart and Brown does not teach or suggest each and every element of Appellants' presently claimed invention.

Therefore, Appellants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

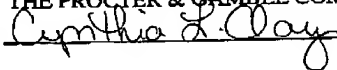
#### SUMMARY

In view of all of the above, it is respectfully submitted that the aforementioned rejections are erroneous. The Board's reversal of the rejections is respectfully requested.

Respectfully Submitted,

THE PROCTER & GAMBLE COMPANY

By



Cynthia L. Clay  
Registration No. 54,930  
(513) 622-0291

February 14, 2005

Customer No. 27752



Appl. No. 09/845,941  
Atty. Docket No. P126  
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Customer No. 27752

### CLAIMS APPENDIX

1. (Previously amended) A pet food composition comprising an effective inflammatory response-reducing amount, on a dry matter basis, of omega-6 and omega-3 fatty acids in a weight ratio of about 5:1, wherein the omega-3 fatty acids comprises at least about 80% alpha-linoleic acid derived from flaxseed oil, by weight of the omega-3 fatty acids, and wherein the majority of omega-6 fatty acids are derived from flaxseed oil, said composition comprising from about 7 to about 14% by weight total fat, which composition is formulated as a cat food.
2. (Original) The pet food composition of claim 1 in which at least about 20 wt% of the total fatty acids are omega-6 fatty acids.
3. (Original) The pet food composition of claim 1 in which at least about 4 wt% of the total fatty acids are omega-3 fatty acids.
4. (Original) The pet food composition of claim 1 in which said omega-3 fatty acids further comprise eicosapentaenoic acid, docosahexaenoic acid, or combinations thereof.
5. (Canceled).
- 6.-9. (Withdrawn).
10. (Previously amended) The pet food composition of claim 1 which is a solid cat food selected from the group consisting of dry kibble, moist chunk foods, moist canned cat food and cat treats.
11. (Previously amended) The pet food composition of claim 10 which is fortified with vitamins and micronutrients.